

JS

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District EASTERN
Name (under which you were convicted): HARRIS NEWMAN		Docket or Case No.: 15 0213
Place of Confinement: SCI- Waymart P.O. Box 256, Waymart, PA 18472-0256		Prisoner No.: KB-5291
Petitioner (include the name under which you were convicted) Harris Newman		Respondent (authorized person having custody of petitioner) v. Wayne J. Gavin, Superintendent
The Attorney General of the State of PENNSYLVANIA		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Court of Common Pleas of Bucks County, Pennsylvania - Criminal Division
Courthouse, 55 East Court Street, Doylestown, PA 18901
- (b) Criminal docket or case number (if you know): CP-09-CR-0001509-2011
- (a) Date of the judgment of conviction (if you know): May 11, 2011
- (b) Date of sentencing: June 17, 2011
- Length of sentence: 7½ years to 15 years, 3 to 10 cc, & 10 years Probation
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: Three Counts
of conspiracy to provide a controlled substance to a drug dependent
person, six felony counts of improper administration of a controlled
substance by practitioner, and six felony counts of delivery or
possession with intent to deliver a controlled substance.
- (a) What was your plea? (Check one)

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input checked="" type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing? N/A

Yes ☐ No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: Superior Court of Pennsylvania

(b) Docket or case number (if you know): No. 1535 EDA 2013

(c) Result: affirming the August 13, 2013 order - Bucks County

(d) Date of result (if you know): July 2, 2014

(e) Citation to the case (if you know): 2013 Pa. Dist. & Cnty. Dec. LEXIS 343

(f) Grounds raised: A. Did trial counsel ineffectively fail to support
Petitioner's case for sentencing leniency, by failing to oppose the
Commonwealth's more extreme claims relating to conduct over and above
the criminal acts actually charged? B. Ineffective assistance of
Counsel. C. Trial Counsel ineffectively advise Petitioner against
filing a motion for reconsideration of sentence and appeal.

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: Court of Common Pleas of Bucks County, Pennsylvania

(2) Docket or case number (if you know): No.: 1509 of 2011

(3) Result: Found that the issues raised in the appeal were/are with-
out merit.

(4) Date of result (if you know): August 13, 2013

(5) Citation to the case (if you know): Unreported Opinion

(6) Grounds raised: Same as Above

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): _____

(2) Result: _____

(3) Date of result (if you know): _____

(4) Citation to the case (if you know): _____

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

- (b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Any fact that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt. Fourteenth Amendment violation of Due Process

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The Commonwealth implicated Petitioner in the death of an individual not specifically charged in an information and/or indictment disproven by relevant medical, prescription and legal records.

(b) If you did not exhaust your state remedies on Ground One, explain why: _____

(c) Direct Appeal of Ground One:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: PCRA

Name and location of the court where the motion or petition was filed: _____

Court of Common Pleas of Bucks County, Pennsylvania

Docket or case number (if you know): No.: 1509 Of 2011
 Date of the court's decision: August 13, 2013
 Result (attach a copy of the court's opinion or order, if available): Issues raised on-
appeal are without merit - Unreported opinion

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

In the Superior Court of Pennsylvania

Docket or case number (if you know): No. 1535 EDA 2013

Date of the court's decision: August 20, 2014

Result (attach a copy of the court's opinion or order, if available): _____

Affirmed - Unreported memorandum opinion of Superior Court of

Pennsylvania.

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: _____

Petition for allowance of appeal to the Supreme Court of Pennsylvania

Middle District- M.D. Allocatur Docket 2014

GROUND TWO: Trial Counsel Ineffectively Failed to Dispel, and Actually
Created, the Incorrect Impression that Petition was Unwilling to Accept
Responsibility
 (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: _____

(c) Direct Appeal of Ground Two: _____

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☒ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Post Conviction Relief Act

Name and location of the court where the motion or petition was filed: Court of Common
Please of Bucks County, Pennsylvania

Docket or case number (if you know): No: 1509 of 2011

Date of the court's decision: August 13, 2013

Result (attach a copy of the court's opinion or order, if available): Found that the issues
raised in this appeal are without merit. (enclosed)

(3) Did you receive a hearing on your motion or petition?

Yes ☒ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Superior Court of Pennsyl-
vania

Docket or case number (if you know): No. 1535 EDA 2013

Date of the court's decision: April 24, 2013

Result (attach a copy of the court's opinion or order, if available): Affirming the Final
Order of Court of Common Pleas of Bucks County Denying Post Conviction
Collateral Relief

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

- (e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: _____
Petition for Allowance of Appeal in the Supreme Court of Pennsylvania
Middle District

GROUND THREE: Trial Counsel Ineffectively Advised Petitioner Against
Filing a Motion for Reconsideration of Sentence & Appeal.

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):
The filing of a post-sentence motion would have preserved the discretionary
aspects of sentence for further review by the Superior Court.

- (b) If you did not exhaust your state remedies on Ground Three, explain why: _____

- (c) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____ / _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: _____

GROUND FOUR: _____

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Four, explain why: _____

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: _____

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: _____

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☒ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: _____

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: ALL GROUNDS HAVE BEEN RAISED

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: William L. Goldman, Jr.; 90 East State Street;
P.O. Box 1989; Doylestown, Pennsylvania 18901-1989

(b) At arraignment and plea: Same as Above

(c) At trial: Nolo Contendere plea - Same as Above

(d) At sentencing: Same as Above

(e) On appeal: Carole L. McHugh, Esquire, Attorney Identification No.
19641; 410 Old York Road, Jenkintown, PA 19046-2809

(f) In any post-conviction proceeding: Same as Above

(g) On appeal from any ruling against you in a post-conviction proceeding: _____
Same as Above

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.* N/A

Having filed my initial PCRA petition, I had used 172 days of the one
year federal habeas statute of limitations as of the date January 5,
2012; therefore, as of November 7, 2014, that statute of limitations
began to run once again, and will expire at the end of the remaining
193 days, which I calculate to be May 18, 2015.

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

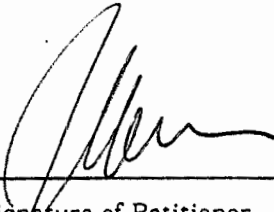
Therefore, petitioner asks that the Court grant the following relief: Vacate present
Sentence and Remand to be re-sentenced to a term consistent within
the Guidelines without enhancement.
 or any other relief to which petitioner may be entitled.

N/A

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on _____ (month, date, year).

Executed (signed) on 1/7/15 (date).


 Signature of Petitioner

* (...continued)

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: N/A
- _____
- _____

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. _____

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☒ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised: _____

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: William L. Goldman, Jr.; 90 East State Street;
P.O. Box 1989; Doylestown, Pennsylvania 18901-1989

(b) At arraignment and plea: Same as Above

- (c) At trial: Same as Above
- (d) At sentencing: Same as Above
- (e) On appeal: Carole L. McHugh, Esquire, Attorney Identification No. 19641; 410 Old York Road, Jenkintown, PA 19046-2809
- (f) In any post-conviction proceeding: Same as Above
- (g) On appeal from any ruling against you in a post-conviction proceeding: Same as Above

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give the name and location of the court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☐ No

18. **TIMELINESS OF PETITION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition*

N/A

Having filed my initial PCRA petition, I had used 172 days of the one year federal habeas statute of limitations as of the date January 5, 2012, therefore, as of November 7, 2014, that statute of limitations began to run once again, and will expire at the end of the remaining 193 days, which will be May 18, 2015.

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* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State Court. The limitation period shall run from the latest of -
 - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
 - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
 - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
 - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief: To correct any and all illegal sentence(s); and to have Petitioner sentenced within the prescribed applicable Guidelines; and for any other relief the Court may deem appropriate.

or any other relief to which petitioner may be entitled.

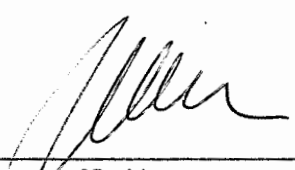
Signature of Attorney (if any)

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I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this
Petition for Writ of Habeas Corpus was placed in the prison mailing system on 1/8/15
(month, date, year)

Executed (signed) on 1/9/15 (date).



Signature of Petitioner

If the person signing is not the petitioner, state the relationship to petitioner and explain why petitioner is not signing
this petition. _____

